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(16,776.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 225.

LUCETTA R. MEDBURY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 28, 1898.

1 In the Court of Claims, December Term, 1893.

LUCETTA R. MEDBURY
vs.
THE UNITED STATES. } No. 18656.

I.—*Petition. Filed November* 14, 1894.

The petition states that the claimant is a citizen of the United States, residing in the city of Detroit, in the State of Michigan, and is the sole heir of Samuel Medbury, who died in the city of Detroit in the year 1873; that on the 7th day of August, 1872, the said Samuel Medbury, deceased, made cash entries Nos. 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, and 2116 at the United States land office at Bayfield, Wisconsin, and paid for the said lands the double minimum price of $2.50 per acre, the said lands being at time of entry within the limits granted to the State of Wisconsin by the act of May 5, 1864 (13 Stat., p. 66), for the construction of a railroad from Portage city to Bayfield, and thence to Superior or Lake Superior, in the State of Wisconsin; that the said railroad was never built from Ashland to Superior, and that the said land grant was forfeited between Ashland and Superior by the act of March 2d, 1889, and restored to the public domain; that the lands entered by the said Samuel Medbury were opposite the unconstructed portion of the said railroad and were included within the limits forfeited by the said act of March 2, 1889, and restored to the public domain, and became by the said act of forfeiture outside the limits of a railroad land grant; that, accordingly, the claim-

2 ant, on the 29th day of October, 1894, applied to the Commissioner of the General Land Office for the repayment of $1.25 per acre upon the 7,244.27 acres entered by the said Samuel Medbury, under the provisions of the 2d section of the act of June 16, 1880 (21 Stat. L., 287); which said applications have been rejected by the said Commissioner, acting under the rulings and instructions of the honorable the Secretary of the Interior.

The petition further states that the said Samuel Medbury paid double minimum price for the said 7,244.27 acres of land, and that the said land has since been found not to be within the limits of a railroad land grant, and that the claimant, as heir of the said Samuel Medbury, deceased, is entitled to the repayment of $1.25 per acre, under the provisions of the said act of June 16, 1880, and that the said repayment has been refused by the honorable the Secretary of the Interior.

Wherefore the claimant prays judgment against the United States in the sum of $9,055.33.

HARVEY SPALDING & SONS,
Attorneys for the Claimant.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Edwin W. Spalding, of said county, having been duly sworn, deposes and says that he is one of the attorneys for the above-named claimant; that no assignment of said claim or of any interest therein or portion thereof has been made, excepting as stated in the said petition; that the claimant is justly entitled to the amount therein claimed from the United States, as deponent verily believes, exclusive of all offsets and just grounds of defense, and that the facts stated in the said petition are true.

EDWIN W. SPALDING,
Attorney for the Claimant.

Sworn to and subscribed before me this 14th day of November, 1894.

[SEAL.] FRANK B. MARLOW,
Notary Public.

3 II.—*Traverse. Filed November* 15, 1897.

December Term, A. D. 1897.

LUCETTA R. MEDBURY
vs.
THE UNITED STATES. } No. 18656.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney General.

4 III.—*Findings of Fact and Conclusion of Law. Filed December* 6, 1897.

This case having been heard by the Court of Claims, the court, upon stipulation of parties as to the facts to be found herein, find the same in accordance therewith, as follows:

I.

Congress, by the act of May 5th, 1864 (13 Stat. L., 66), made a grant of lands to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Portage city, Berlin, Doty's

island, or Fond du Lac, as said State might determine, in a northwestern direction to Bayfield, and thence to Superior city, on Lake Superior, which grant was by the terms of the act made upon condition that said railroad should be built.

II.

Whereupon, by authority of the Secretary of the Interior, the price of lands proposed to be reserved within the limits of said conditional grant of lands along the line of the proposed railroad between Ashland and Superior city was raised from $1.25 per acre to $2.50 per acre.

III.

Samuel Medbury entered at the land office at Bayfield, Wisconsin, on the 7th day of August, 1872, 7,244.27 acres of land within the limits of that section of the conditional grant to the proposed railroad between Ashland and Superior city, for which he was required to pay by reason of said proposed grant of lands $2.50 per acre, amounting to $18,110.67.

IV.

Samuel Medbury died in 1874, leaving as his heirs Lucetta R. Medbury, widow; Lewis O. Medbury, a son, and Esther O. Medbury, a daughter.

V.

Lucetta R. Medbury, the claimant, as administratrix, settled the estate, and after settlement of the estate Esther O. Medbury, on the 6th day of October, 1877, by deed conveyed to Lucetta R. Medbury "all and singular the lands and real estate to the said Lucetta R. Medbury belonging in law or in equity and all rights and interests of every kind therein wheresoever situated whether in the State of Michigan or in any other State of the United States or elsewhere. Also all personal property, rights in action, bills, notes, bonds, claims and demands of every nature, including any and all rights which I have or may have in or to the property of the estate of my father, Samuel Medbury, Esq., it being hereby intended to embrace all my property, real and personal, and wherever the same may be."

VI.

Lewis O. Medbury, the son, and Mary E. Medbury, his wife, by deed, executed on the 24th day of April, 1884, conveyed unto Lucetta R. Medbury, the claimant, "all lands, premises and real property of every description and wherever situated, of which the said Samuel Medbury was seized or possessed or in manner equitably entitled to at the time of his death, or which has been purchased with money or assets belonging to the estate of said Samuel Medbury since his death except those parcels this day specifically conveyed to said Lewis O. Medbury by Lucetta R. Medbury as aforesaid."

6 VII.

The conditions upon which the said grant of lands was made to that section of the proposed railroad between Ashland and Superior city were never complied with and the proposed railroad was never constructed, for which reason the said proposed grant of lands was, by the act of Congress of September 29, 1890 (26 Stat. L., 496), forfeited to the United States.

VIII.

It having been found by the said act of Congress that the lands purchased by Samuel Medbury were not alternate reserved lands along the line of a railroad within the limits granted by an act of Congress, Lucetta R. Medbury, the claimant, made application to the Secretary of the Interior for repayment of the excess of $1.25 per acre under the second section of the act of June 16, 1880.

IX.

On the 5th of October, 1897, the following action was had by the Secretary of the Interior on the claimant's said application:

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *October* 5, 1897.

The Commissioner of the General Land Office.

SIR: I am in receipt of your office letter 'M' of June 23, 1897, reporting adversely upon the application filed on behalf of
(J. R.) Lucetta R. Medbury for repayment of double minimum excess paid by Samuel Medbury upon cash entries Nos. 2106 to 2116, inclusive, Bayfield series, Wisconsin. These
7 cash entries were made on August 7, 1872, and Medbury paid at the rate of two dollars and fifty cents per acre, the land being within the primary limits of the grant under the act of May 5, 1864 (13 Stat., 66), to aid in the construction of the Wisconsin Central railroad. Said road was not constructed opposite the lands covered by said cash entries, and by the act of March 2, 1889 (25 Stat., 888), the price of lands similarly situated was reduced to one dollar and twenty-five cents per acre. The grant opposite this portion of the road was forfeited by the act of September 29, 1890 (26 Stat., 496).

From the above recitation it is clear that at the time Medbury made the entries in question he was properly charged two dollars and fifty cents per acre, the lands being rated at the double minimum price.

In the application under consideration it is urged that as the grant opposite the lands in question has been forfeited, it 'has afterwards been found' that the lands covered by said entries are not within the limits of a railroad grant, and repayment should be made under the provisions of the second section of the act of June 16, 1880 (21 L. D., 287). Said section provides:

* * * and in all cases where parties have paid double minimum price for the land which has afterwards been found not to be

within the limits of a railroad land grant, the excess of one dollar and twenty-five cents per acre shall in like manner be repaid to the purchaser thereof or to his heirs or assigns.

It has uniformly been ruled by this department that the proper construction of said section makes the condition at the time of the entry the criterion in determining the question as to whether repayment should be made under said section.

The case under consideration is in all important particulars similar to that of Byron Allison (19 L. D., 488), in which it was held that repayment of the double minimum excess cannot be
8 allowed where the land was properly held at that price at the date of its sale.

In the other hand, in the case of Thomas Kearney (7 L. D., 29), repayment was allowed specifically upon the ground that at the time Kearney's entry was made the land was not within the limits of a railroad land grant, the same having been forfeited prior to the making of his entry.

The argument filed in support of the application under consideration discloses no sufficient reason for departing from the previous adjudications of this department, and the application is accordingly denied and the papers in the case herewith returned for the files of your office.

Very respectfully, C. N. BLISS, *Secretary.*"

Conclusion of Law.

Upon the foregoing findings of fact the court decide as a conclusion of law, under authority of Foster's case (32 C. Cls. R., 170), that the petition be dismissed for want of jurisdiction.

(The court filed no opinion in this case.)

[Endorsed:] Court of Claims. No. 18656. Lucetta R. Medbury *vs.* The United States. Findings of fact and conclusion of law. Harvey Spalding & Sons, att's for claimant.

9 IV.—*Judgment of the Court.*

LUCETTA R. MEDBURY *vs.* THE UNITED STATES. } No. 18656.

At a Court of Claims, held in the city of Washington, D. C., on the 6th day of December, A. D. 1897, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Lucetta R. Medway, be dismissed.

BY THE COURT.

10 V.—*Application of Claimant for and Allowance of Appeal.*

LUCETTA R. MEDBURY
vs.
THE UNITED STATES. } No. 18656.

At a Court of Claims, held in the city of Washington on the 14th day of December, A. D. 1897, a motion for the allowance of an appeal to the Supreme Court of the United States was filed in open court, to wit:

Now comes the said claimant and prays that an appeal may be allowed her from the judgment of the court in this case to the Supreme Court of the United States.

HARVEY SPALDING & SONS,
Attorneys for Claimant.

Mr. Spalding, for the claimant, having presented the aforesaid application for allowance of appeal filed of this date, December 14, 1897, it was ordered that it be allowed as prayed for.

BY THE COURT.

11 In the Court of Claims.

LUCETTA R. MEDBURY
vs.
THE UNITED STATES. } No. 18656.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court dismissing the petition, of the application for and the allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 6th day of January, A. D. 1898.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16,776. Court of Claims. Term No., 225. Lucetta R. Medbury, appellant, *vs.* The United States. Filed January 12, 1898.